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10 Attorneys for Defendant  
11 **RECEIVABLES PERFORMANCE**  
12 **MANAGEMENT, LLC**

13 JOSHUA HALL, on behalf of himself and  
14 all others similarly situated,

15 Plaintiff,

16 vs.

17 RECEIVABLES PERFORMANCE  
18 MANAGEMENT, LLC,

Defendant.

Case No: 13-CV-0805 BEN RBB

**DEFENDANT'S ANSWER TO  
AMENDED COMPLAINT AND  
DEMAND FOR JURY TRIAL**

Complaint Filed: April 4, 2013  
FAC Filed: January 9, 2014  
FPTC: September 29, 2014  
Trial Date: TBD

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Defendant RECEIVABLES PERFORMANCE MANAGEMENT, LLC (“Defendant”) hereby responds on behalf of itself, and no other, to the Amended Class Action Complaint of Plaintiff JOSHUA HALL (“Plaintiff”) as follows:

1. Pursuant to Rule 8(b)(3) of the Federal Rules of Civil Procedure, Defendant generally denies each and every allegation contained in the complaint except those expressly admitted below.

2. Defendant admits the allegations of paragraphs: 7, 10, and 13.

## **PRAYER FOR RELIEF**

Defendant denies that Plaintiff is entitled to any of the items set forth in the prayer for relief.

## **AFFIRMATIVE DEFENSES**

## **First Affirmative Defense**

### (Bona Fide Error)

Plaintiff's claims are barred as against Defendant by 15 U.S.C. § 1692k(c) and California Civil Code 1788.30(c).

## **Second Affirmative Defense**

### (Preemption)

Plaintiff's state law claims are barred as against Defendant by federal statutes, including 15 U.S.C. § 1692 et seq.

## **Third Affirmative Defense**

### (Exhaustion of Administrative Remedies)

Plaintiff's Amended Complaint is barred due to his failure to exhaust his administrative remedies.

## **Fourth Affirmative Defense**

#### (Improper Request for Statutory Damages)

Plaintiff's Amended Complaint does not allege facts sufficient to rise to the level of conduct required to recover statutory damages under Civil Code § 1788.30 and thus all requests for statutory damages there under are improper.

1                   **Fifth Affirmative Defense**

2                   **(Statute of Limitations)**

3                   Defendant is informed and believes and thereon alleged that the applicable statutes  
4 of limitation bar all claims for relief in the Amended Complaint.

5                   **Sixth Affirmative Defense**

6                   **(Contributory/Comparative Fault)**

7                   Defendant is informed and believes and thereon alleges that any alleged damages  
8 sustained by Plaintiff were, at least in part, caused by the actions of Plaintiff and resulted  
9 from Plaintiff's own negligence, which equaled or exceeded any alleged negligence or  
10 wrongdoing by Defendant.

11                  **Seventh Affirmative Defense**

12                  **(Failure to Mitigate)**

13                  The damages claimed by Plaintiff could have been mitigated with due diligence or  
14 by one acting under similar circumstances. Plaintiff's failure to mitigate is a bar to  
15 recovery under the Amended Complaint.

16                  **Eighth Affirmative Defense**

17                  **(Estoppel)**

18                  The Amended Complaint and each of its purported claims for relief are barred by  
19 the doctrine of estoppel.

20                  **Ninth Affirmative Defense**

21                  **(Laches)**

22                  The Amended Complaint and each of its purported claims for relief are barred by  
23 the doctrine of laches.

24                  **Tenth Affirmative Defense**

25                  **(Unclean Hands)**

26                  The Amended Complaint and each of its purported claims for relief are barred by  
27 the doctrine of unclean hands. Plaintiff's Amended Complaint does not contend that the  
28 subject debt is not owed, nor that the subject debt has been satisfied. As such, Plaintiff is

1 in breach of the agreement with the credit originator, and but for the breach of that  
2 agreement Defendant would not have communicated with Plaintiff.

3                   **Eleventh Affirmative Defense**

4                   **(Waiver)**

5                   The Amended Complaint and each of its purported claims for relief are barred by  
6 the doctrine of waiver.

7                   **Twelfth Affirmative Defense**

8                   **(Good Faith)**

9                   Defendant alleges that at all times it acted in good faith and with good cause. The  
10 conduct of Defendant was within the reasonable expectations of the parties and was  
11 reasonably related to Defendant's legitimate business interests upon the basis of  
12 reasonable factors.

13                   **Thirteenth Affirmative Defense**

14                   **(Failure to State a Claim)**

15                   The Amended Complaint fails to state facts sufficient to constitute a cause of  
16 action against Defendant relative to the content of the alleged communications and  
17 further fails to state facts sufficient to entitle Plaintiff to the relief sought, or to any other  
18 relief whatsoever, from Defendant.

19                   **Fourteenth Affirmative Defense**

20                   **(Joinder)**

21                   Defendant is informed and believes and thereon alleges that any purported  
22 damages allegedly suffered by Plaintiff are the result of the acts or omissions of third  
23 persons over whom Defendant had neither control nor responsibility, and whom Plaintiff  
24 has failed to name in this action.

25                   **Fifteenth Affirmative Defense**

26                   **(Due Process)**

27                   Plaintiffs' Prayer for statutory damages is excessive, in violation for the Due  
28 Process Clause of the Constitution.

1                   **Sixteenth Affirmative Defense**

2                   **(Unclean Hands)**

3                   The Amended Complaint and each of its purported claims for relief are barred by  
4 the doctrine of unclean hands. Plaintiff failed to provide Defendant, and on information  
5 and belief, the credit originator, with his updated contact information. As such, Plaintiff  
6 is in breach of the agreement with the credit originator, and but for the breach of that  
7 agreement Defendant would not have communicated with Plaintiff.

8                   **Seventeenth Affirmative Defense**

9                   **(Cal. Civil Code § 1788.21)**

10                  Plaintiff's claims under the Rosenthal Act are barred under California Civil Code  
11 §§ 1788.21 and 1788.30(g) if Plaintiff failed to advise the creditor of any changes in his  
12 name, address or employment within a reasonable time after those changes.

13                  **Eighteenth Affirmative Defense**

14                  **(Cal. Civil Code §§ 1788.20(a) and 1788.30(g))**

15                  Plaintiff's claims under the Rosenthal Act are barred under California Civil Code  
16 §§ 1788.20(a) and 1788.30(g) if Plaintiff obtained some or all of the credit alleged in the  
17 Amended Complaint without the intention to pay those obligations in accordance with the  
18 terms and conditions of his credit agreement.

19                  **Nineteenth Affirmative Defense**

20                  **(Cal. Civil Code §§ 1788.20(a) and 1788.30(g))**

21                  Plaintiff's claims under the Rosenthal Act are barred under California Civil Code  
22 §§ 1788.20(a) and 1788.30(g) if Plaintiff obtained some or all of the credit alleged in the  
23 Amended Complaint without the knowledge that there was no reasonable probability of  
24 his being able to pay those obligations in accordance with the terms and conditions of his  
25 credit agreement.

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## **Twentieth Affirmative Defense**

(Cal. Civil Code §§ 1788.20(b) and 1788.30(g))

Plaintiff's claims under the Rosenthal Act are barred under California Civil Code §§ 1788.20(b) and 1788.30(g) if Plaintiff obtained some or all of the credit alleged in the Amended Complaint by knowingly submitting false or inaccurate information to the credit issuer or by willfully concealing adverse information bearing upon his credit worthiness, credit standing, or credit capacity.

## **Twenty-First Affirmative Defense**

#### (Reserved Affirmative Defenses)

Defendant alleges that the Amended Complaint does not describe the alleged actions with sufficient particularity to permit it to ascertain what other defenses may exist at this time. Defendant therefore reserves the right to assert all defenses that may pertain to the Complaint as the facts of the case are discovered.

**WHEREFORE**, Defendant prays as follows:

1. Plaintiff takes nothing by way of his Amended Complaint herein and that this action is dismissed in its entirety;
  2. For Defendant's attorneys' fees and costs incurred herein;
  3. For such other relief as the Court may deem just and proper.

DATED: January 24, 2014

# **FOLEY & MANSFIELD, PLLP**

By: /s/ Sean P. Flynn

Sean P. Flynn

M. Amadea Groseclose  
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**Attorneys for Defendant  
REGINA ARIESE DEP**

# **RECEIVABLES PERFORMANCE MANAGEMENT, LLC**

1                   **DEMAND FOR JURY TRIAL**  
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3                   PLEASE TAKE NOTICE that defendant RECEIVABLES PERFORMANCE  
4 MANAGEMENT, LLC hereby demands a trial by jury in this action.  
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6 DATED: January 24, 2014

FOLEY & MANSFIELD, PLLP

7                   By: */s/ Sean P. Flynn* \_\_\_\_\_  
8                   Sean P. Flynn

9                   M. Amadea Groseclose  
10                  Attorneys for Defendant  
**RECEIVABLES PERFORMANCE**  
**MANAGEMENT, LLC**